



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201311043

DEC 26 2012

Uniform Issue List: 408.03-00

T.E.P.:R.A.T.3

Legend:

Taxpayer A:

Amount M:

IRA X:

Financial Advisor H:

CPA A:

Trust Account Y:

Dear :

This is in response to letters dated January 3, 2012, and June 14, 2012, as supplemented by correspondence dated July 17, 2012, and September 14, 2012, submitted by your authorized representative on your behalf, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 91, owned an Individual Retirement Account (IRA), IRA X, sponsored by Financial Advisor H. Taxpayer A represents that on June 29, 2011, he received a distribution of Amount M from IRA X. Taxpayer A asserts that his failure to complete a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to misleading tax advice from CPA A and Financial Advisor H.

In March, April, and May of 2011 Taxpayer A was planning to change brokers and to roll over IRA X to a different IRA which would be serviced by a new

broker. During this process he had multiple conversations with Taxpayer's prior CPA, CPA A, regarding loans that were made personally and had become bad debts. Taxpayer A discussed this bad debt and the funds that Taxpayer A intended to roll over within the required 60 day period.

Taxpayer A spoke with an associate at CPA A's office on multiple occasions, both before and after the IRA X distribution, who provided advice to Taxpayer A that the investment losses incurred because of the bad debts could be offset against the income from the IRA distribution. Taxpayer A also received advice from Financial Advisor H that Taxpayer A could offset the bad debt losses against the IRA distribution income.

Following the advice from Financial Advisor H and CPA A, on 6/29/11, Amount M was transferred from IRA X to Trust Account Y, a non-IRA account, with the understanding on the part of Taxpayer A that because of the bad debt loss offset in year 2011, he would not need to rollover Amount M.

On December 9, 2011, Taxpayer A was informed that contrary to the advice he had received, the bad debt losses were capital in nature and could not be deducted against the ordinary income in connection with the Amount M distribution from IRA X that had not been rolled over.

In a letter dated July 17, 2012, CPA A stated that his office provided incorrect tax information to Taxpayer A in June 2011.

Amount M has been invested in Trust Account Y to which it was transferred and was never used for any other purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to the distribution of Amount M from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount M was due to misleading tax advice from his CPA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

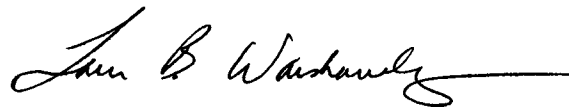
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact
SE:T:EP:RA:T:3

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: